

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Loren Leman
Lieutenant Governor

Date: October 12, 2005

File No.: 663-06-0020

Tel. No.: 465-3600

From: Michael A. Barnhill *MB*
Assistant Attorney General
Labor and State Affairs – Juneau

Re: Review of Initiative Application
on Use of Pesticides in Schools

I. INTRODUCTION AND SUMMARY

You have asked us to review an application for an initiative petition entitled "An Act that protects children, school staff, and licensed child care facility staff from unnecessary exposure to toxic pesticides through use of least toxic pest management; regulates the purchase and storage of pesticides by schools and licensed child care facilities; requires pesticide use recordkeeping and public availability of records; and requires public notification when pesticides are used." We have completed our review and find that the application complies with the constitutional and statutory provisions governing the use of the initiative. Under these circumstances we recommend that you certify the application.

II. SUMMARY OF THE PROPOSED BILL AND ANALYSIS

A. Summary

The bill seeks to impose limits on the use of pesticides in schools and licensed child care facilities. The limits sought to be imposed are the same for both schools and licensed child care facilities (except where noted below), but they are set forth in the bill separately.

Section 1 of the bill sets forth certain findings regarding the prevalence of pesticides and their danger to children. It also sets forth that the intent of the bill is to limit exposure of children to pesticides and to provide notice to parents when pesticides are used at schools and child care facilities.

Hon. Loren Leman
A.G. file no: 663-06-0020

October 12, 2005
Page 2

Sections 3 and 9 of the bill set forth requirements for the implementation of pest management procedures in schools and licensed child care facilities. Such procedures require that pesticides be used only as a last resort.

Sections 4 and 10 of the bill prohibit the use of chemicals in schools and licensed child care facilities that are "acutely or chronically toxic or linked with health effects such as cancer, hormone disruption, reproductive damage, immune system damage, or nervous system toxicity." These sections prohibit the use of pesticides for aesthetic or nuisance purposes. These sections also prohibit the use of US EPA Toxicity Categories I and II pesticides, unless the commissioner of the Department of Environmental Conservation determines that an emergency exists and other less toxic remedies have been tried without satisfactory result.

Sections 5 and 11 of the bill require that schools and licensed child care facilities store pesticides in a secure and locked location. These sections also prohibit a pesticide application contractor from storing pesticides on school or licensed child care facility property or disposing of any pesticide containers on such property.

Sections 6 and 12 of the bill require schools and licensed child care facilities to keep certain records regarding pesticide use, including an explanation of why the pesticide was used, for a period of five years. Section 6 requires school districts to prepare an annual report regarding the use of pesticides as well as a pest management plan for the coming year. There is no similar reporting requirement for licensed child care facilities.

Sections 7 and 13 require schools and licensed child care facilities to provide notice to parents at least 48 hours prior to the use of pesticides. The notices must be sent home as well as be conspicuously posted. Among other things, the notice must contain the following language:

"CAUTION: Pesticides may be harmful to your health, and you are advised to minimize exposure to them. Pregnant women, infants, children, and individuals with respiratory or heart disease, chemical sensitivities, or weakened immune systems may be particularly susceptible to adverse health effects due to pesticide exposure."

Sections 8 and 14 are definition sections.

Hon. Loren Leman
A.G. file no: 663-06-0020

October 12, 2005
Page 3

Section 15 is a severability clause, and section 16 provides for an effective date of 120 days following its approval by the voters of the state.¹

B. Analysis

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either "certify it or notify the initiative committee of the grounds for denial." The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080. We discuss these next.

1. The form of the proposed bill

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects—dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation—are listed in AS 15.45.010 and in art. XI, sec. 7, of the Alaska Constitution.

The bill is confined to one subject: pesticide use in schools and licensed day care facilities. The subject of the bill is expressed in the title. The enacting clause is set forth correctly. The bill does not include any of the prohibited subjects. Accordingly, the bill is in the required form.

2. The form of the application

The form of an initiative application is prescribed in AS 15.45.030, which provides:

¹ We note that art. XI, sec. 6, of the Alaska Constitution provides that "[a]n initiated law becomes effective ninety days after certification" Certification often takes about thirty days following an election. Thus, it is possible that the 120 days following voter approval specified in the initiative approximates the 90 days following certification specified in the constitution. While we think it possible for an initiative to specify a later effective date than required by the constitution, it cannot specify an earlier date. Thus, if certification takes longer than 30 days, then the effective date clause would become void.

Hon. Loren Leman
A.G. file no: 663-06-0020

October 12, 2005
Page 4

The application shall include (1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

The application meets the first three requirements. With respect to the fourth requirement, the Division of Elections within your office determines whether the application contains the signatures and addresses of not less than 100 qualified voters.

3. Number of qualified sponsors

The Division of Elections within your office will determine whether there are a sufficient number of qualified sponsors.

III. PROPOSED BALLOT AND PETITION SUMMARY

We have prepared the following ballot-ready petition summary and title for your consideration:

REGULATING PESTICIDES IN SCHOOLS/OTHER FACILITIES

This bill requires public schools, private schools and licensed child care facilities to have pest management policies and monitoring that limit a child's contact with pesticides. It allows the use of pesticides only as a last resort. It bans certain pesticides unless there is an emergency. It requires that records be kept of the use of pesticides. It requires notice before and after the use of any pesticide.

Should this initiative become law?

This summary has a Flesch test score of 51.2, which approximates the target readability score of 60. We believe that the summary meets the readability standards of AS 15.60.005.

Hon. Loren Leman
A.G. file no: 663-06-0020

October 12, 2005
Page 5

IV. CONCLUSION

Assuming that the Division of Elections determines that there are a sufficient number of qualified subscribers, we conclude that this bill and application are in the proper form, and that the application complies with the constitutional and statutory provisions governing the use of the initiative. Therefore, we recommend that you certify this initiative application, and so notify the initiative committee. Preparation of the petitions may then commence in accordance with AS 15.45.090.

Please contact me if we can be of further assistance to you on this matter.

MAB/ccg

cc: Laura Glaiser, Director of the Division of Elections